Court No. 2

Civil Misc. Writ Petition No.3439 (M/S) of 2001
(Old No.27535 of 1992)

Sardar Kartar Singh …… Petitioner.

Versus

The Additional District Judge/
Special Judge, Anti Corruption,
Dehradun and seven others. …….. Respondents.

……

Hon'ble P.C. Verma, J.

Heard learned counsel for the petitioner as well as learned counsel for the respondents.

The order dated 27.05.2002 is recalled. The petition is restored.

Now I proceed to dispose of the application for substitution dated 11.07.1997 moved by the petitioner. The substitution application No.42889 of 1997, dated 11.07.1997 was moved by the petitioner within time, but it was not supported with any affidavit as required under the provisions of Chapter IX Rule 12 of the High Court Rules (Allahabad), 1952. As per procedure in the Allahabad High Court, the Additional Registrar allowed one month's time to file affidavit. One month's time could not have been allowed as the limitation prescribes for 90 days and it expired on 20th August, 1997. The maximum time should have been allowed to file an affidavit by 20th August, 1997. However, after this application no affidavit was filed within a month but an application was filed on 20.01.1998 supported by an affidavit.

The affidavit of Joginder Singh S/o Kartar Singh who has been identified by Satya Nand, clerk of Sri R.K. Gupta Advocate, District Court, Dehradun was filed, who in Para-1 has alleged that he was authorized to file the affidavit and was duly conversant with the facts of the affidavit. In Para-2 it has been stated that the petitioner Kartar Singh died on 21.05.1997, leaving behind the following heirs and legal heirs:-

1. Gurbax Singh	{
2. Gurbachan Singh	{Sons of late Kartar Singh
3. Surjeet Singh	{
4. Baldev Singh	{
5. Joginder Singh	{
6. Kuldeep Singh	{
7. Mrs. Jasbir Kaur	{Daughter of late Kartar Singh
8. Mrs.Amrit Kaur	{Widow of late Kartar Singh.

Para-3 of the said affidavit, is also reproduced as under:-

> "That it is, therefore, expedient in the interest of justice that the aforesaid heirs and legal representatives of late Sardar Kartar Singh, the petitioner, may be substituted in the aforesaid writ petition in place of the late petitioner, Sardar Kartar Singh, otherwise the applicants will suffer grave and irreparable loss."

The application dated 20th January, 1998 alongwith the affidavit was filed by the petitioner in support of the substitution application dated 11.07.1997 in the registry of the High Court. Thus, the application for substitution which was alleged to be within time was not in accordance with the provisions of Chapter IX Rule 12 of the High Court Rules (Allahabad), 1952 and if the affidavit which was filed alongwith the application dated 20th January, 1998 in the registry of the High Court is considered to be affidavit in support of the application, then the application for substitution was entertained in the High Court on 20th January, 1998 and application became in accordance with the provisions of Chapter IX Rule 12 of the High Court Rules but on 20th January, 1998 the substitution application became time barred.

As observed above, the limitation expired on 20th Aug., 1997. There is no application for condonation of delay in substituting the heirs of the deceased petitioner. In absence of any application for condonation of delay the application for substitution is held to be time barred and it is accordingly rejected.

The writ petition is dismissed accordingly.

(P. C. Verma, J.)

29.10.2002
P.Singh